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GOVERNMENT GAZETTE

BOLETIM OFICIAL

SUPPLEMENT

(SUPLEMENTO)

GOVERNMENT OF GOA, DAMAN AND DIU

Legislative Assembly of Goa, Daman and Diu

Legislature Department

No. LA/659

The following Report of the Select Committee on Bill No. 5 of 1964 (The Goa, Daman and Diu Excise Duty Bill, 1964) along with the Bill as amended by the Select Committee which was presented to the Legislative Assembly of Goa, Daman and Diu, on the 24th August 1964 is hereby published for general information in pursuance of the provisions of rule 260 of the Assembly Rules.

(Bill No. 5 of 1964)

A BILL

To consolidate and amend the law relating to the levy of a *tree tax* and of a *duty of excise* on liquor in the Union Territory of Goa, Daman and Diu and for matters connected therewith.

COMPOSITION OF THE SELECT COMMITTEE

- 1) Shri V. S. Karmali, Minister-in-charge of the Bill, (Chairman)
- 2) Shri Tony Fernandes, Minister for Law,
- 3) Shri Jaysingrao Rane M. L. A.,
- 4) Shri Vijay Kamulkar, M. L. A.,
- 5) Shri Dattaram Chopdekar, M. L. A.,
- 6) Dr. A. de Loyola Furtado, M. L. A.,
- 7) Shri J. L. G. Araujo, M. L. A.,
- 8) Shri Orlando Sequeira Lobo, M. L. A.

SECRETARIAT

Law and Legislature Department

Shri S. Balakrishnan, Secretary.

Shri R. V. Oroskar, Under Secretary.

Finance Department

Shri T. B. Nagarajan, Secretary.

Shri Rajaram Hede, Deputy Commissioner of Revenue and Taxes.

REPORT OF THE SELECT COMMITTEE

As Chairman of the Select Committee to which Bill No. 5 of 1964 (Bill to consolidate and amend the law relating to the levy of a duty of excise on liquor in the Union Territory of Goa, Daman and Diu and for matters connected therewith) was referred, I have the honour to present herewith the Report of the Committee together with the Bill as amended by the Committee.

2. The Bill was introduced in the Legislative Assembly on the 17th July 1964. The Motion for reference of the Bill to a Select Committee was passed by the House on 23rd July 1964.

3. All the Members of the Legislative Assembly were requested to send in their amendments and suggestions, if any, on or before the 6th August 1964. Members of the Public were also requested through a Press Note to offer their views and send in their suggestions, if any, on or before the 6th August 1964. The amendments and suggestions received from Members as well as those received from other persons and organisations were considered by the Committee.

4. The Committee held six meetings in all. The first sitting was held on the 30th July 1964 for settling the procedure. At the sittings held on the 10th, 11th, 12th and 13th August 1964, the provisions of the Bill together with the amendments and suggestions received were discussed. The Committee finalised the amendments to be incorporated in the Bill and adopted the Report.

5. Before dealing with the various clauses of the Bill it is necessary at the outset to refer to one of the main changes considered necessary by the Committee in regard to the levy of a duty on the import and export of liquor. The provisions of the Bill as introduced in the Assembly presumably based on the precedents of the pre-Constitution laws do not make it clear whether a specific duty is to be levied on the import or export of liquor apart from the duty on its manufacture. A duty on Excise being essentially a levy on the manufacture or production of a substance, a further duty on the import or export of the same substance might lead to double taxation. Further, such a duty on import or export is virtually a duty on the act of import or export and as such it might not be within the competence of this Legislature to authorise such duty. The Committee considers that it is best to confine the duty of Excise under the Act to a duty on the manufacture or production and a countervailing duty on the imports. Accordingly, suitable alterations have been made to the various clauses of the Bill. It has been made clear that in regard to liquor imported from outside what is levied is the countervailing duty referred to in item 51 of List II in the Seventh Schedule to the Constitution and also that in the case of export no additional duty is leviable apart from the duty on the manufacture or production of liquor. The requirement of a licence at the point of export is to provide a machinery for checking up whether the manufacturing duty has been paid or not.

6. The observations of the Committee in regard to the other important changes in the Bill are set out in the succeeding paragraphs:

7. *Preamble* — The preamble is amplified to clarify the intention that the legislation is intended also to continue the existing levy of a tax on trees tapped for extraction of juice.

8. *Clause 2* — (i) *sub-clause (f)* — The definition of «duty» is amplified to make it clear that on imports of liquor only countervailing duty is to be levied.

(ii) *sub-clause (r)* — The definition of «proof gallon» is substituted by the definition of «proof litre». This change is necessary in view of adoption of the metric system of weights and measures in India.

(iii) *sub-clause (p)* — The Committee felt that a vehicle should also be included in the definition of «place», as a motor car for instance might not come under any of the items now in the definition.

9. *Clause 3* — *sub-clause (3)* — The Committee considered it necessary to enable the Commissioner to delegate his functions to other officers besides the Deputy and Assistant Commissioner. This change is necessary because in Daman and Diu, it may not be necessary to appoint a full time Assistant Commis-

sioner and the public in that area might be put to difficulties if they have no officer with adequate powers in the locality.

10. *Clause 4* — This clause has been amended to clarify that the purpose of a licence at the point of export is to ensure that duty on manufacture has been paid.

11. *Clause 6* — This clause provides that liquor shall not be removed from any place of manufacture or storage unless the duty payable has been actually paid. The Committee felt that this provision was a little harsh and should be mitigated by providing the facility of executing a bond in lieu of actual payment of duty. The clause has been amended for this purpose.

12. *Clause 7* — It has been made clear in sub-clause (2) that the licence is only for possession and not for manufacture.

13. *Clause 10* — For the reasons already set out in para 5, the Committee felt that the deletion of the words «the import or export of liquor and» from this Clause was necessary.

14. *Clause 12* — This clause provides for the levy of a duty of excise on manufacture, import or export of liquor. For the reasons explained in para 5, the Committee considered that deletion of the words «or taken out of» would be necessary. In the case of imports, no change is necessary as only countervailing duty will be levied.

The Committee further felt that toddy used for the manufacture of jaggery, vinegar, yeast or neera should not be subjected to a levy of this duty. Such toddy will of course bear the levy of a tree tax under clause 14 and in the Committee's view a further levy on manufacture should not be made on toddy used for these non intoxicating purposes. Further it is necessary to encourage village industries for the manufacture of palm-gur and the like. A proviso to this clause has accordingly been added exempting toddy used for manufacture of jaggery, vinegar, yeast and neera from the levy of duty on liquor.

15. *Clause 13* — (i) *sub-clause (b)* — The Committee felt that words «or exported from» should be deleted for the reasons explained in paragraph 5.

(ii) *Sub-clauses (c) and (d)* — The Committee felt that these sub-clauses should be deleted from this clause as they pertain to licence fee and a tree tax respectively which cannot properly come under a clause dealing with mode of levy of duty on liquor. Sub-clause (c) will come under clause 14 and sub-clause (d) will come under clause 15.

16. *Clause 14* — (i) — The Committee felt that it would be better to make a substantive and separate provision for the levy of a tree tax. A new sub-clause has been accordingly inserted in clause 14 as sub-clause (1) and sub-clause (2) as renumbered has been suitably altered.

(ii) *Sub-clause (3)* — This renumbered sub-clause provides that when any tax is due in respect of any tree it shall be recoverable from the tapper or in default by him from the owner or occupier of the land unless he proves that the trees were tapped without his consent. The Committee felt that this

provision would cause great hardship to the owner or occupier of palm tree gardens; the toddy tappers might also suffer as owners might refuse to allow tapping of their trees by poorer persons.

The Committee, therefore, felt that the owner or occupier should be made liable only where the trees are tapped without a licence. This sub-clause is, therefore, amended accordingly.

17. *Clause 15* — The Bill itself in its Schedule makes provision for levy of a licence fee and to enable this, this clause has been suitably amended.

18. *Clause 21* — (i) *sub-clause (2)* — The Committee felt that the sub-clause should be amended so as to clarify that the stocks of liquor manufactured in this territory would be liable to payment of duty on manufacture or import, as the case may be.

(ii) *sub-clause (2)* — For reasons explained in para 11 above the Committee felt that facility of giving a bond should be provided. The sub-clause is accordingly amended.

19. *Clause 23* — *sub-clause (a)* — This sub-clause empowers the Commissioner or any Excise Officer to enter and inspect at any time by day or by night any place in which liquor is manufactured or stored. The Committee felt that in the case of an officer other than the Commissioner, the entry for search of any residential premises must be made only when the officer is accompanied by either a Sarpanch or a Panch of the village or any other respectable person of the locality. The sub-clause is amended accordingly.

20. *Clause 25* — This clause empowers any officer of the Excise, Police, Customs or Land Revenue Department not below a specified rank to search any person, vessel, raft, etc., on suspicion. The Committee felt that it was necessary to make a further provision in addition to the provision in clause 34 for protecting innocent persons from harassing or humiliating searches. A new sub-clause is, therefore, added providing for issue of a certificate to the person searched when no liquor or other objectionable articles are found on search.

21. *Clause 42* — In sub-clause (2) it has been clarified that the exemption covers also possession of liquor referred to therein.

22. *Schedule: (i) Part (A)* — The Committee felt that in view of the fact that it would not be possible for the Government to levy duty on export of liquor and that only countervailing duty can be levied on import of liquor, there is ample justification for increasing the rates of duty on manufacture of liquor. But having regard to the fact that the duty is being levied for the first time in this territory, no large scale increase is recommended. The main change in the rates is that the rates for proof litres have been given instead of proof gallons in view of the adoption of metric system of weights and measures. The rates have been rounded off and as a consequence slightly raised in some cases.

(ii) *Part B* — For the reasons given in para 5 this part of schedule has been substituted by a new part giving rates of countervailing duty on import.

(iii) *Part C* — In view of the difficulty pointed out in para 5 the Committee felt that this part of the schedule has to be deleted.

(iv) *Part D-II Sale* — The Committee felt that wholesale and retail vendors of rectified spirit or absolute alcohol or denatured spirit should be charged licence fees at lower rates. This has, therefore, been provided by amending this schedule.

(v) — The Committee felt that in the Explanation, Daman and Diu should be treated as towns rather than as cities and that Sanquelim should be treated as a town rather than as a village. This part of the schedule is, therefore, amended accordingly.

(vi) *Part D-II Import and Export* — The Committee considers that the fees for import and export permit should be raised from Rs. 2/- to Rs. 10/-.

23. The changes made by the Committee in other clauses of the Bill are either clarificatory or of a minor, consequential or drafting nature.

24. Two Honourable Members of the Committee have appended a Minute of Dissent on two points. The first is that no residential premises should be searched during night. The Committee feels that having regard to the nature of the problem to be tackled, a prohibition of searches during the night will open the door to large scale illicit distillation and evasion of law. Sufficient safeguard against vexatious search exists in clause 34 and the Committee has made a further provision making it obligatory for the presence of respectable witnesses during entry for search. The other point relates to the rates of duty in the Schedule, and in respect of this, the Committee feels that there is no justification for a reduction in view of the changes made in the Bill by it.

25. The Committee would like to express its thanks to the Law Secretary, the Finance Secretary, the Deputy Commissioner, Revenue and Taxes and the Under Secretary Legislature for their assistance in the deliberations.

V. S. KARMALI

Chairman

ASSEMBLY HALL

Panjim, August 24, 1964

MINUTE OF DISSENT

by

Dr. A. de Loyola Furtado, M. L. A.

and

Shri Orlando Sequeira Lobo, M. L. A.

We feel compelled to submit this minute of dissent because our differences with the other members of the Select Committee in regard to power given to the Commissioner and Excise Officers to enter and inspect at any time by day or *by night* a dwelling house in which liquor is or may be manufactured or stored and in respect of rates of duty under section A of the Schedule and of rates of fees on licences, under section C of the Schedule, on II-Sales per year and on IV-Miscellaneous, are fundamental.

We maintain that search and inspection of dwelling houses should be confined to the hours of the day only, not later than 6 p. m., and not earlier than 7 a. m., as, otherwise, people in this territory long accustomed to a progressive system of law that

rightly ensured the sanctity of dwelling houses particularly during the hours of the night would feel insecure with the omnibus powers of search and inspection conferred on those Officers. Whatever illicit distillation that may take place in dwelling houses during the night cannot be considered such a heinous crime as it is artificially made out to be as to warrant nocturnal search and inspection. Nor do considerations of possible loss of revenue from nocturnal illicit distillation justify for that matter, from the stand point of hierarchy of human values, harassment by Excise Officers during the night. Social evils must be mainly combated by social remedies and not by fiscal impositions with threats of search and inspection of dwelling houses even at night. Fiscal impositions and administrative threats are not a sufficient deterrent for the eradication of the evil of drunkenness and for the prevention of loss of revenue. The experience of the other States of the rest of India provides many lessons that he who runs can see.

It is fantastic that in Schedule A the rates of duty on manufactured liquor have been paradoxically raised for all the items it contains in comparison with the rates of the Bill as introduced in the house. Goans have been used to obtaining liquors for consumption at very cheap prices during the Portuguese regime and it was but natural to expect that excise duty would be introduced gradually and at easy stages and intervals if only to make the transition smooth and to provide incentives for manufacturing liquor industry. The imposition of relatively heavy rates of excise duty on manufacture of liquors, as the ones proposed to be levied so inconsiderately by the majority of the members, will only result in harming economic incentives — the incentive to work, to save and to run a risk, — in the private sector, by biting into the effective rate of remuneration, thereby jeopardizing the very future of the liquor industry of this territory, particularly in respect of export; will raise wages and prices all round inordinately at a time when the price spiral has assumed alarming proportions; will affect adversely many a liquor establishment since with a low purchasing power a sizeable proportion of the population of the territory will not be in a position to purchase liquor at exorbitant rates; will create congenial conditions for illicit distillation by bootleggers with consequent loss of revenue; excise crimes will increase without any reduction in consumption; and last but not the least, the industry of tourism will be affected.

Our considered opinion is that the rates of duty on manufacture of all items of Schedule A, except absolute alcohol, should be reduced by 50%, and in case of absolute alcohol which constitutes the basis or the raw material of liquor industry, there should be no excise duty at all.

Similarly we feel that the rates of fees on licences under II-Sale per year — should be reduced by 50% and under IV-Miscellaneous — para (1) by 25% and para (2) by 50%.

It may not be forgotten that with the extension of Central taxation laws to this territory taxes on income and others have to be considered in respect of liquor trade imposing a burden of taxation that in many cases may cramp the growth of trade and industry.

A. DE LOYOLA FURTADO, M.L.A.

ORLANDO A. J. SEQUEIRA LOBO, M.L.A.

[NOTE. — Deletions made by the Select Committee are shown in square brackets and additions are underlined].

The Goa, Daman and Diu Excise Duty Bill, 1964

(Bill no. 5 of 1964)

(As amended by the Select Committee)

A Bill to consolidate and amend the law relating to the levy of a tree tax and of a duty of excise on liquor in the Union Territory of Goa, Daman and Diu and for matters connected therewith.

Be it enacted by the Legislative Assembly of Goa, Daman and Diu in the Fifteenth year of the Republic of India as follows:

1. **Short title, extent and commencement.** — (1) This Act may be called the Goa, Daman and Diu Excise Duty Act, 1964.

(2) It extends to the whole of the Union Territory of Goa, Daman and Diu.

(3) It shall come into force on such date as the Government may, by notification, appoint and different dates may be notified for different areas.

2. **Definitions.** — In this Act, unless the context otherwise requires, —

(a) «beer» includes ale, stout, porter and any other fermented liquor usually made from malt;

(b) «to bottle» means to transfer liquor from a cask or other vessel to a bottle, jar, flask or similar receptacle for the purpose of sale, whether any process of manufacture or rectification be employed or not, and includes rebottling;

(c) «country liquor» means liquor manufactured in any part of India;

(d) «denatured» means effectually and permanently rendered unfit for human consumption;

(e) «Commissioner» means the Commissioner appointed under sub-section (1) of section 3;

(f) «duty» means the duty of excise imposed by or under this Act in any of the ways indicated in Section 13, [including] and in the case of imports, the countervailing duty mentioned in entry 51 of List II in the Seventh Schedule to the Constitution;

(g) «Excise Officer» means the Commissioner or any other officer appointed under sub-section (1) of section 3;

(h) «export» means take out of the Territory to any place in India beyond the limits of the Territory;

(i) «foreign liquor» means all liquor other than country liquor and includes such liquor as may, by notification be declared by the Government as foreign liquor for the purposes of this Act;

(j) «Government» means the Government of Goa, Daman and Diu;

(k) «import» means bring into the Territory from any place in India beyond the limits of the Territory;

(l) «liquor» includes spirits of wine, methylated or denatured spirits, spirits, wines, toddy, beer, feni and all liquid consisting of or containing alcohol other than medicinal and toilet preparations;

(m) «manufacture» includes every process, whether natural or artificial, by which any fermented, spirituous, or intoxicating liquors produced, prepared or blended and also every process for the rectification or redistillation of liquor;

(n) «notification» means notification published in the Official Gazette;

(o) «Official Gazette» means the Goa, Daman and Diu Government Gazette;

(p) «place» includes a house, building, shop, tent, vehicle, vessel, boat, raft or enclosure;

(q) «prescribed» means prescribed by rules made under this Act;

(r) «proof gallon» means a gallon of a mixture of alcohol and water which at the temperature of 51 Degrees Fahrenheit weighs exactly twelve-thirteenths (12/13) parts of an equal measure of distilled water];

(r) «proof litre» means a litre of a mixture of ethil alcohol and distilled water which at the temperature of 51 degrees Fahrenheit weighs exactly twelve-thirteenths (12/13) parts of an equal measure of distilled water at the same temperature.

(s) «rectification» includes every process whereby spirits are purified or are coloured or flavoured by mixing any material therewith;

(t) «sale» with its grammatical variations and cognate expressions includes every transfer otherwise than by way of gift;

(u) «spirits» means any liquor containing alcohol and obtained by distillation, whether it is denatured or not;

(v) «Territory» means the Union Territory of Goa, Daman and Diu;

(w) «toddy» means fermented or unfermented juice drawn from coconut, cajuri or any kind of palm-tree;

(x) «transport» means to move from one place to another within the Territory.

3. Appointment of Excise Officers and delegation of powers.—(1) For the purpose of implementing the provisions of this Act, the Government may appoint a Commissioner and as many Deputy or Assistant Commissioners or other officers as may be considered necessary.

(2) The Government may delegate to the Commissioner all or any of its powers under this Act.

(3) The Commissioner may, subject to the approval of the Government, delegate to any Deputy or Assistant Commissioner or such other officer as may be prescribed all or any of his powers under this Act.

4. Import and export of liquor.—No liquor shall be imported into or exported from the Territory except on the authority of a permit issued by the Commissioner [and unless] indicating that the duty, if any, imposed by or under this Act has been paid or [unless] a bond has been executed for the payment thereof in the prescribed form and manner.

5. Transport of liquor.—No liquor exceeding such quantity as the Government may, from time to time, prescribe by notification either for the whole of the Territory or for any local area thereof, shall be transported within the Territory except on the authority

of and in accordance with the conditions, if any, in a permit issued by the Commissioner:

Provided that unless the Government by notification otherwise directs with respect to any local area, no such permit shall be required when foreign liquor is transported for genuine private consumption or for sale at any place at which the sale of such liquor is duly licensed or permitted under the provisions of this Act.

6. Removal of liquor from distillery, etc.—No liquor shall be removed from any distillery, brewery, pot still, warehouse or other place of storage established or licensed under this Act unless the duty, if any, payable under this Act has been paid or unless a bond has been executed for the payment thereof in the prescribed form and manner.

7. Manufacture of liquor.—(1) No liquor shall be manufactured or produced or bottled, no tree shall be tapped for toddy and no toddy or juice shall be drawn from any tree or from cashew fruit except under the authority of a licence issued under this Act.

(2) No person shall use, keep or have in his possession any material, still, utensil, implement or apparatus for the purpose of manufacturing any liquor and no distillery, brewery or pot still shall be constructed or worked, save under the authority of a licence issued under this Act in this behalf.

8. Possession of and transactions in liquor.—(1) No person not being a licensed manufacturer or dealer of liquor shall have in his possession any quantity of liquor in excess of such quantity as the Government may, by notification, prescribe, except under the authority of a permit issued by the Commissioner and in accordance with the conditions, if any, therein.

(2) Every dealer or vendor of liquor shall maintain a full account of his transactions in liquor in the prescribed form.

9. Sale of liquor.—No liquor shall be sold except under the authority of a licence issued under this Act:

Provided that the Government may, by notification, direct that a licence for sale granted under any other law for the time being in force in the Territory may, subject to such conditions as may be specified therein, be deemed to be a licence granted under this Act.

10. Prohibition of transport of liquor.—The Government may, by notification, prohibit [the import or export of liquor and] the transport of liquor.

11. Establishment of distilleries and ware-houses. The Commissioner may with the previous approval of the Government—

(a) establish a public distillery or authorise the establishment of one or more private distilleries in which liquor may be manufactured under a licence granted under this Act;

(b) establish a public warehouse or authorise the establishment of [a] one or more private warehouses wherein liquor may be deposited and kept without payment of duty; and

(c) discontinue any public or private distillery or warehouse so established.

12. Levy of Duty. — There shall be levied and collected at such rates and in such manner as may be prescribed by or under this Act, a duty of excise not exceeding the rates set forth in the Schedule, on all liquor manufactured in, or brought into [or taken out of] the Territory:

Provided that no such duty shall be levied on toddy when used for the manufacture of jaggery, vinegar, yeast or neera.

13. Mode of Levy. — The duty on liquor leviable under this Act may be levied in one or more of the following ways, namely: —

(a) by way of a duty on the quantity of liquor manufactured in or passed out of any place of manufacture or storage including a distillery, brewery or warehouse licensed or established under this Act;

(b) by way of a duty on the quantity of liquor imported into [or exported from] the Territory [;];

[(c) by way of fees on licenses for manufacture, sale, import or export of liquor; and,]

[(d) by way of a tax on each tree from which toddy is drawn.]

14. Recovery of tree tax. — (1) There shall be levied on each tree from which toddy is drawn a tax at the rates specified in the schedule and in such manner as may be prescribed.

[(1)] (2) When [duty] any tax is levied [by way of tax] on a tree under [section 13] sub-section (1) the licence under section 7 shall be granted to a person other than the owner of such tree only on production of the written consent of such owner to the grant of the licence.

[(2)] (3) When any tax is due in respect of any tree, it shall be recoverable from the tapper or in default by him, where the tree is tapped without a licence under this Act from the owner or occupier of the land, unless he proves that the trees were tapped without his consent.

Explanation: In this section, the expression owner includes a person in possession.

15. Licences. — Every licence or permit granted under this Act shall be granted, —

(a) by such officer,

(b) on payment of such fees, if any,

(c) for such period,

(d) subject to such conditions or restrictions, and

(e) in such form and with such particulars, as may be prescribed, by or under this Act.

16. Power to cancel licences. — (1) A licence or permit granted under this Act may be cancelled by the Commissioner for good and sufficient reasons to be recorded in writing, after giving an opportunity to the person concerned for making any representation and after considering such representation.

(2) In particular and without prejudice to the generality of sub-section (1), the Commissioner may cancel or suspend any licence or permit granted under this Act, —

(a) if any fee or duty payable by the holder thereof be not duly paid; or

(b) if there is any breach by the holder of the licence or permit, or by his servants, or acting with his express or implied consent, on behalf, of any of the terms or conditions of the licence or permit or of the terms of any executed under section 17; or

(c) if the holder thereof is punished for an offence against this Act, or of any cognizable offence; or

(d) if the conditions of the licence or permit provide for such cancellation or suspension.

(3) The holder of a licence or permit shall be entitled to any compensation for the cancellation or suspension thereof under this section or refund of any fee paid or deposit made in respect thereof.

17. Agreement. — Every person taking a licence under this Act may be required to enter into an agreement in conformity with the terms of the licence, and in the form prescribed, and to furnish security, if any, for the performance of his obligations as may be prescribed.

18. Measures, weights and testing instruments. — Every person who manufactures or sells any liquor under a licence granted under this Act shall be bound —

(a) to equip himself with such measures, weights and instruments as the Commissioner may require, and to keep the same in good condition; and

(b) on the requisition of any Excise Officer empowered in that behalf, at any time to measure, weigh or test any liquor in his possession in such manner as such Officer may require.

19. Prohibition of sale etc. to certain persons. — No licensed vendor and no person in the employment of a licensed vendor and acting on his behalf shall sell or supply any liquor —

(a) to any person apparently under the age of 18 years, or

(b) to any person of unsound mind.

20. Recovery of sums due to Government. — In respect of duty and any other sums of any kind payable to the Government under any of the provisions of this Act or of the rules made thereunder, the officer empowered to levy such duty or to receive the payment of such sums may deduct the amount so payable from any money owing to the Government from whom such sums may be recoverable or from whom such sums may be recoverable or under his control, or may recover the amount by attachment and sale of excisable goods belonging to such person; and if the amount payable is not so recovered he may prepare a certificate signed by him specifying the amount due from the person liable to pay the same and send it to the appropriate officer for the time being authorised by law to recover arrears of revenue having jurisdiction over the place in which such person resides or conducts his business and the said officer, on receipt of such certificate, shall proceed to recover from the said person the amount specified therein as if it were an arrear of land revenue.

21. Transitional. — (1) Every stockist, dealer or vendor of liquor shall give a declaration in writing to the Commissioner or an officer nominated by him

behalf, containing detailed particulars and of the various categories of liquor in his on or control on the date of coming into this Act.

to such liquor shall be sold by him except of duty equal in amount to that leviable import of] liquor of a like kind if manu- in or as the case may be, imported into, ritory after the commencement of the Act the grant of permission to sell the same by missioner or his nominee.

The Commissioner may permit the sale of the or part of any such stock of liquor on the of a suitable amount pending the payment duty leviable or on executing a bond therefor form and manner prescribed.

Power of Government to make rules. — (1) Government may make rules generally for the e of carrying out the purposes of this Act. n particular and without prejudice to the gene- of the foregoing provisions, such rules may : for —

regulating the delegation of any power by nmissioner;

defining the powers and duties of officers of cise Department;

regulating the extraction and distillation of and its sale to licensed vendors;

regulating the extraction of cashew juice, the to be charged for its sale, the distillation of therefrom and its sale;

regulating the import, export, transport or sion of any liquor;

prescribing the mode of and conditions for the of licence to manufacture or sell liquor by sale or by retail, including conditions as to the of validity of the licence, areas in which it is and the procedure to be followed before its

the prohibition of sale of any liquor to [any] persons or class of persons in [the circum- s prescribed;] such circumstances as may be ived.

the prohibition of the employment by the li- of [any] such persons or class of persons as be specified to assist in his business in [any ity whatsoever.] such capacity as may be spe-

the prevention of drunkenness, gambling or derly conduct in or near any licensed premises ne assembly of persons of bad character in such ses;

regulating the deposit of any liquor in a ware- and the removal thereof from such warehouse om any distillery, pot still or brewery;

prescribing the manner of levying or compu- he fees payable in respect of any licence, permit respect of storage of any liquor;

regulating the time, place and manner of pay- of any duty or fee;

), prescribing the restrictions under and the tions on which any licence or permit may be ed;

(n) fixing of the days and hours during which any licensed premises may or may not be kept open, and the closure of such premises on special occasions;

(o) regulating the form of accounts to be main- tained and the returns to be submitted by licensees;

(p) declaring the process by which spirits manu- factured in India shall be denatured and for causing such spirit to be denatured through the agency or under the supervision of Excise Officers;

(q) providing for the destruction or other disposal of any liquor deemed to be unfit for use;

(r) regulating the disposal of articles confiscated and the sale proceeds thereof.

23. Power to enter and inspect place of manufac- ture and sale. — The Commissioner or any Excise Officer not below such rank as may be prescribed, may, —

(a) enter and inspect at any time by day or by night any place in which any licensed manufacturer carries on the manufacture of or stores any liquor [;];

Provided that no Excise Officer other than the Commissioner shall so enter or search any residential premises unless he is accompanied by the Sarpanch, or the Panch or any other respectable person of the locality.

(b) enter and inspect at any time within the hours during which sale is permitted and at any other time during which the same may be open, any place in which any liquor is kept for sale by any person holding a licence under this Act;

(c) examine any book, account, or register or examine, test measure or weigh any materials, stills, utensils, implements, apparatus or liquor found in any such place as is referred to in clauses (a) and (b) above; and,

(d) seize any measures, weights or testing instru- ments which he has reason to believe to be false.

24. Power of certain officers to investigate into offences. — (1) Any officer of the Excise Depart- ment not below such rank as may be prescribed may investigate into any offence punishable under this Act committed within the limits of the area in which such officer exercises jurisdiction.

(2) Any such officer may exercise the same powers in respect of such investigation as an officer in charge of a police station may exercise in respect of an investigation into a cognizable case under the provisions of the Code of Criminal Procedure 1898 and, if specially empowered in that behalf by the Government, such officer may for reasons to be recorded by him in writing, stop further proceedings against any person concerned in any such offence into which he has investigated.

25. Power of seizure and detention. — (1) Subject to such restrictions as may be prescribed, any officer of the Excise, Police, Customs or Land Revenue Department not below such rank as may be prescribed, and any other person duly authorised in this behalf by the Government may seize and detain any liquor or other article which he has reason to believe to be liable to confiscation under this Act and may search any person, vessel, raft, vehicle, animal, package, receptacle or covering upon whom, or in or upon

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which, he may have reasonable cause to suspect any such liquor or article to be or to be concealed.

(2) Where as a result of such search no liquor or other article is actually found to be concealed on such person, vessel, raft, vehicle, animal package, receptacle or covering a certificate to that effect shall be given in the prescribed form by the officer to the person concerned.

26. Search Warrants. — If any Magistrate upon information given by any Excise or Police officer or any other person has reason to believe that an offence under this Act has been, is being or is likely to be committed, he may after recording the information in writing signed by the informant, issue a warrant for the search of any place in which he has reason to believe that any liquor or any utensil, implement, apparatus or materials, in respect of which such offence has been, is being, or is likely to be committed, is kept or concealed.

27. Power of Excise Officer to search without warrant. — (1) Whenever an Officer of the Excise Department not below such rank as may be prescribed has reason to believe that an offence punishable under this Act has been, is being or is likely to be committed in any place and that a search warrant cannot be obtained without affording the offender an opportunity of concealing evidence of the offence, he may after recording his reasons and grounds of his belief, at any time, by day or night, enter and search such place and may seize anything found therein which he has reason to believe to be liable to confiscation under this Act.

(2) Any such officer may arrest any person found in such place whom he has reasons to believe to be guilty of any offence under this Act.

Provided that every person arrested under this section shall be admitted to bail by such officer as aforesaid if sufficient bail be tendered for his appearance either before a Magistrate or an Excise Officer.

28. Duty of officers of certain departments to report offences and to assist Excise Officers. — Every Officer of the Police, Customs and Land Revenue Departments shall be bound to give immediate information to an officer of the Excise Department of any breach of any of the provisions of this Act which may come to his knowledge, and to aid any officer of the Excise Department in carrying out the provisions of this Act upon request made by such officer.

29. Duty of officer in charge of police station to take charge of articles seized. — Every officer in charge of a police station shall take charge of and keep in safe custody, pending the orders of a Magistrate or the Excise Commissioner or an Excise Officer duly empowered in that behalf, all articles seized under this Act which may be delivered to him; and shall allow any officer of the Excise Department who may accompany such articles to the police station or may be deputed for the purpose by his superior officer, to affix his seals to such articles, and to take samples of or from them. All samples so taken shall also be sealed with the seal of the officer in charge of the police station.

30. Penalty for contravention of provisions. — Whoever, in contravention of this Act, or of any rules or order made thereunder, or of any licence or permit obtained under this Act, —

(a) imports, exports, transports or carries liquor; or

(b) manufactures, produces or bottles liquor;

(c) constructs or works any distillery, or pot still; or

(d) uses, keeps, or has in his possession any materials, still, utensils, implements or apparatus not necessary for the purpose of manufacturing liquor;

(e) sells liquor; or

(f) draws toddy from any tree, shall on conviction before a Magistrate be punished for each such offence with a fine which may extend to one thousand rupees or imprisonment for a term which may extend to one year or with both.

Provided that in respect of any offence under clause (f), the amount of fine may be such as may be prescribed.

31. Penalty for certain acts or omissions by holders of licence. — Whoever, being the holder of a licence or permit granted under this Act or being in the employ of such holder and acting on his behalf, —

(a) fails to produce such licence or permit on demand by any Excise Officer or any other officer duly empowered to make such demand; or

(b) wilfully does or omits to do anything in breach of any of the conditions of his licence or permit not otherwise provided for in this Act;

(c) wilfully contravenes any rule made under section 22 of this Act; or

(d) permits drunkenness, disorderly conduct, or gambling in any place in which any liquor is sold or manufactured; or

(e) permits persons of notoriously bad character to meet or remain in any such place, shall on conviction before a Magistrate be punished for each such offence with fine which may extend to five hundred rupees or with imprisonment which may extend to three months or with both.

32. Penalty for certain acts by holders of licence for sale or manufacture. — Whoever, being the holder of a licence for the sale or manufacture of liquor under this Act, or being in the employ of such holder and acting on his behalf, —

(a) mixes or permits to be mixed with the liquor sold or manufactured by him any noxious drug or any foreign ingredient likely to add to its actual or apparent intoxicating quality or strength;

(b) sells or exposes for sale foreign liquor which he knows or has reason to believe to be country liquor;

(c) marks any bottle or its cork, or any case, package or other receptacle containing liquor, manufactured from rectified spirit or country liquor with the intention of causing it to be believed that such bottle, case, package or other receptacle contains foreign liquor, shall on conviction before a Magistrate be punished for each such offence with fine which may extend to five hundred rupees or with imprisonment which may extend to three months or with both.

33. Penalty for possession of contraband liquor. — Whoever, without lawful authority has in his possession any quantity of liquor knowing the same to have been unlawfully imported, transported or manufactured, or knowing that the prescribed duty has not been paid thereon, shall on conviction before a Magistrate be punished with fine which may extend to one thousand rupees or with imprisonment which may extend to six months or with both.

34. Vexatious search seizure, etc. by Officers. — (1) Any Excise Officer or other person exercising powers under this Act, or under the rules made thereunder, who, —

(a) without reasonable ground of suspicion searches or causes to be searched any [house, boat or] place;

(b) vexatiously and unnecessarily detains, searches or arrests any person;

(c) vexatiously and unnecessarily seizes the movable property of any person, on pretence of seizing or searching for any article liable to confiscation under this Act;

(d) commits, as such officer, any other act to the injury of any person, without having reason to believe that, such act is required for the execution of his duty;

shall, for every such offence be punishable with fine which may extend to two thousand rupees.

(2) Any person wilfully and maliciously giving false information and so causing an arrest or a search to be made under this Act shall be punishable with fine which may extend to two thousand rupees or with imprisonment for a term which may extend to two years or with both.

35. Penalties for offences not otherwise provided for. — Whoever is guilty of any act or intentional omission in contravention of any of the provisions of this Act, or of any rule or order made under this Act, and not otherwise provided for therein shall be punished for each such act or omission with fine which may extend to one thousand rupees.

36. Presumption as to commission of offence in certain cases. — In every prosecution for an offence punishable under this Act, it shall be presumed until the contrary is proved, that the accused person has committed such offence in respect of any liquor, or any still, utensil, implement, or apparatus whatsoever for the manufacture of liquor or any such materials as are ordinarily used in the manufacture of liquor, for the possession of which he is unable to account satisfactorily; and the holder of a licence or permit under this Act shall be punishable, as well as the actual offender, for any offence committed by any person in his employ and acting on his behalf as if he had himself committed the same, unless he established that all due and reasonable precautions were exercised by him to prevent the commission of such offence.

37. Confiscation. — (1) In any case in which an offence has been committed under this Act, the liquor, materials, still, utensil, implement or apparatus in respect or by means of which such offence has been committed shall be liable to confiscation.

(2) Any liquor lawfully imported, exported, transported, manufactured, had in possession or sold along with, or in addition to, any liquor liable to confiscation under this Section, and the receptacles, packages and coverings in which any such liquor, materials, still, utensil, implement or apparatus as aforesaid is or are found, and the other contents, if any, of the receptacles or packages in which the same is or are found, and the animals, carts, vessels or other conveyances used in carrying the same, shall likewise be liable to confiscation.

Provided that no such animal, cart, vessel, or other conveyances shall be so liable to confiscation if the owner thereof, is not the owner of the articles thereby removed and establishes that he had no reason to believe that such offence was being or was likely to be committed.

(3) When anything mentioned in sub-section (1) and (2) is found in circumstances which afford reason to believe that an offence under this Act has been committed in respect or by means thereof, or when such offence has been committed and the offender is not known or cannot be found, the Commissioner may order confiscation of the same:

Provided that no such order shall be made until the expiration of one month from the date of seizing the thing or animal in question or without hearing the person, if any, claiming any right thereto, and considering the evidence, if any, which he produces in support of the claim.

Provided further, that if the thing in question is liable to speedy and natural decay, or if the Commissioner is of the opinion that the sale of the thing or animal in question would be for the benefit of its owner, he may at any time direct it to be sold; and the provisions of this section shall, so far as may be, apply to net proceeds of such sale.

(4) When anything is confiscated under sub-sections (1) or (2) above, it shall thereupon vest in the Government.

38. Limits of confiscation. — In every case in which, under this Act, anything is liable to confiscation and penalty, such confiscation and penalty may be ordered, —

(a) without limit by the Commissioner, or

(b) upto confiscation of goods not exceeding five hundred rupees and imposition of penalty not exceeding fifty rupees by such other Excise Officers as the Government may, from time to time, empower in that behalf.

39. Fine in lieu of compensation. — Whenever confiscation is authorised by this Act, the officer ordering the same may give the owner of the goods an option to pay in lieu of confiscation such fine as the officer thinks fit. Payment of the fine does not absolve the owner of the goods from the payment of duties and other charges prescribed in this Act.

40. Appeals. — (1) Any person deeming himself aggrieved by any decision or order passed by any Excise Officer under this Act or the rules made thereunder may, within [three months] ninety days from the date of such decision or order, appeal therefrom to the Commissioner, or, where the decision or order was passed by the Commissioner, to the

Government. The Commissioner or the Government may thereupon make such further inquiry and pass order as he or it thinks fit, confirming, altering or annulling the decision or order appealed against:

Provided that no such order in appeal shall have the effect of subjecting any person to any greater confiscation or penalty than has been adjudged against him in the original decision or order.

(2) Every order passed in appeal under this section shall, subject to the power of revision conferred by section 41, be final.

41. Revision by Government.—The Government may, on the application of any person aggrieved by any decision or order passed under this Act, or the rules made thereunder, by any Excise officer or by the Commissioner and from which no appeal lies, reverse or modify such decision or order.

42. Exemptions.—(1) Where in the opinion of the Government reasonable grounds exist for doing so, the Government may by notification and subject to such conditions and restrictions as it may impose, exempt any person or class of persons or any liquor from all or any of the provisions of this Act or of rules made thereunder either throughout Goa, Daman and Diu or in any specified part thereof or for any specified period or occasion.

(2) For the removal of doubts it is hereby declared that nothing in this Act shall apply to the import, export possession or transport of liquor or other articles dealt with by any law relating to Customs or Central Excise.

43. Publication of rules and notifications.—All rules made and notifications issued under this Act shall be published in the Official Gazette and shall thereupon have effect from the date of such publication or from such other date as may be specified in that behalf.

44. Bar of certain suits.—(1) No suit shall lie in any civil court against the Government or any officer or person for damages for any act in good faith done or intended to be done in pursuance of this Act.

(2) No civil court shall try any suit which may lawfully be brought against the Government in respect of anything done or alleged to be done in pursuance of this Act unless the suit is instituted within [six months after] one hundred and eighty days from the date of act complained of.

45. Repeal.—(1) On the commencement of this Act, any law in force in the Union Territory of Goa, Daman and Diu authorising taxes and duties on manufacture and sale of liquor or providing for any matter for which provision is made in this Act, shall stand repealed.

(2) The provisions of the General Clauses Act, 1897 shall apply to the repeal under subsection (1) as if the law referred to therein were a Central Act.

46. Power to remove difficulties.—If any difficulty arises in giving effect to the provisions of this Act, the Government may, by order, as occasion requires, do anything (not inconsistent with this Act) which appears to it to be necessary for removing the difficulty.

SCHEDULE

(See Sections 12, 14 and 15)

A

Rates of duty on liquor manufactured in or passed out of any place of manufacture or storage including a distillery, brewery or warehouse licenced or established under the Act:

(1) Brandy, whisky, gin and rum	Rs. [32] 9 per proof [gallon] litre
(2) Milk Punch and other wines	Rs. [12] 4 per bulk [gallon] litre
(3) Beer	Rs. [2] 0.75 ps. per bulk [gallon] litre
(4) Country liquor	[Rs. 4] Re. 1 per proof [gallon] litre
[(6)] (5) Rectified spirit or absolute alcohol	Rs. [4] 0.50 ps. per proof [gallon] litre
(6) Denatured spirit	Rs. 0.50 ps. per proof litre
[(5)] (7) For blending of country liquor [excluding duty on its manufacturing] in addition to the duty on manufacture	Rs. [3] 0.50 ps. per bulk [gallon] litre

[B]

[Rates of duty on import of liquor:

(1) Mollasso Arrack	Rs. 12 per bulk gallon
(2) Brandy, whisky, gin and rum	Rs. 40 per proof gallon
(3) Milk Punch and other wines	Rs. 18 per bulk gallon
(4) Beer	Rs. 3 per bulk gallon
(5) Rectified spirit or absolute alcohol	Rs. 6 per bulk gallon
(6) Denatured spirit	Rs. 2 per bulk gallon]

B

Rates of countervailing duty on liquor imported into the Territory:

Such amount as represents the difference, if any, between the duty leviable under this Act on the quantity of liquor imported, had it been manufactured in the Territory and the duty actually levied on the same quantity of similar goods produced at the place of manufacture:

[C]

[Rates of duty on export of liquor:

(1) Brandy, whisky, gin and rum	Rs. 3 per bulk gallon
(2) Blended country liquor	Rs. 6 per bulk, gallon
(3) Country liquor	Rs. 4 per bulk gallon]

[D] C

Rates of fees on licences per year:

I. Manufacture:

- (1) For manufacturing foreign brand liquor: Rs. 500/-
- (2) For manufacturing beer: Rs. 250/-
- (3) For manufacturing rectified spirit or absolute alcohol or both: Rs. 200/-
- (4) For manufacturing country liquor: each still: Rs. 13/-
- (5) For blending of country liquor: Rs. 150/-
- (6) For bottling of foreign brand liquor: Rs. 100/-

II. Sale:

- (1) For wholesale vendors of liquor: Cities Rs. 1200/-, Towns Rs. 800/- and Villages Rs. 500/-
- (2) For retail vendors of liquor: Cities Rs. 400/-, Towns Rs. 300/- and Villages Rs. 200/-

(3) For wholesale vendors of rectified spirit or absolute alcohol or denatured spirit: Cities Rs. 300/- Towns Rs. 250/- and Villages Rs. 200/-.

(4) For retail vendors of rectified spirit or absolute alcohol or denatured spirit: Cities Rs. 100/- Towns Rs. 50/- and Villages Rs. 25/-.

Explanation. — For the purposes of the above:

- (a) «Cities» means municipal areas of Panjim, Margão, Mapuça and Vasco da Gama, [Daman and Diu].
- (b) «Towns» means municipal areas of Ponda, Bicholim, Valpoi, Pernem, Sanguem, Quepem, Chauri and Curchorem, Sanquelim, Daman and Diu.
- (c) «Villages» means all other parts of Goa, Daman and Diu.

III. Import and Export:

For each permit for import or export of liquor: Rs. [2/-] 10/-

IV. Miscellaneous:

- (1) For retail vendors of liquor for keeping the shops open up to two hours after the prescribed time of closing: a surcharge of 50% of the licence fee.
- (2) For an occasional licence for retail vendors of liquor: First day Rs. 10/-, next 4 days Rs. 6/- per day, next 15 days Rs. 4/- per day, next 40 days Rs. 2-50 Ps. per day and next 60 days Rs. 1-50 Ps.

E

Tree tax per tree per year:

- (1) Coconut tree Rs. 10/-, Cajuri and date trees Rs. 7/- in Goa and Daman and Rs. 5/- in Diu.

ASSEMBLY HALL

S. BALAKRISHNAN

Panjim, August 24, 1964 Secretary to the Legislative Assembly of Goa, Daman and Diu.

No. LA/660

The following Report of the Select Committee on Bill No. 6 of 1964 (The Goa, Daman and Diu Administration of Evacuee Property Bill, 1964) along with the Bill as amended by the Select Committee which was presented to the Legislative Assembly of Goa, Daman and Diu, on the 24th August 1964 is hereby published for general information on pursuance of the provisions of rule 260 of the Assembly Rules.

(Bill No. 6 of 1964)

A BILL

to provide for the administration of evacuee property in the Union Territory of Goa, Daman and Diu and for certain matters connected therewith.

COMPOSITION OF THE SELECT COMMITTEE

- 1) Shr. D. B. Bandodkar—Chief Minister—Minister in-charge of the Bill (Chairman).
- 2) Shr. V. S. Karmali (Minister for Education).
- 3) Shr. Tony Fernandes (Minister for Law).
- 4) Dr. Jack de Sequeira, M. L. A.,
- 5) Shr. V. N. Sarmalkar, M. L. A.,
- 6) Shr. M. R. Jiwani, M. L. A.,
- 7) Shr. D. K. Chopdekar, M. L. A.,
- 8) Dr. A. de Loyola Furtado, M. L. A.

SECRETARIAT

Law and Legislature Department

Shri S. Balakrishnan, Secretary.

Shri R. V. Oroskar, Under Secretary.

REPORT OF THE SELECT COMMITTEE

As Chairman of the Select Committee to which Bill No. 6 of 1964 (A Bill to provide for the administration of evacuee property in the Union Territory of Goa, Daman and Diu and for certain matters connected therewith) was referred, I have the honour on behalf of the Select Committee to present this Report to the Legislative Assembly, together with the Bill as amended by the Committee.

2. The Bill was introduced in the Legislative Assembly on the 22nd July, 1964. The Motion for reference of the Bill to the Select Committee was passed by the House on the 28th July, 1964.

3. All the Honourable Members of the Legislative Assembly were requested to send in their amendments and suggestions, if any, to the Committee on or before the 6th August, 1964. Members of the public were also requested through a Press Note to offer their views and send in their suggestions, if any, on or before the 6th August, 1964. The suggestions and representations which were received were considered by the Committee.

4. The Committee held 3 sittings in all. The first sitting was held on the 30th July, 1964 for discussing certain preliminary matters and for settling the procedure. At the sittings held on the 11th and 12th August, 1964, the provisions of the Bill together with the amendments and suggestions received were discussed. The Committee finalised the amendments to be incorporated in the Bill and adopted the Report.

5. The Committee has the following observations to make in regard to important changes in the Bill considered necessary by it.

6. *Clause 2 — sub-clause (a).* The Committee felt that with the assumption of office by the popular Ministry, it would be more appropriate if, instead of the word «Administrator» the word «Government» is used throughout the Bill. The definition of the word «Administrator» is, therefore, deleted and a definition of «Government» added at the appropriate place.

7. *Clause 2 — sub-clause (c).* This sub-clause which contains the definition of «evacuee» is by far the most important provision in this Bill as it defines the class of persons to whom the provisions of the Bill are intended to apply. With reference to this, serious concern has been expressed in the Press, by the public, and by some of the Honourable Members, as the existing definition in item (iii) of the sub-clause is wide enough to cover practically every person of foreign nationality who has been out of India for any purpose. The Committee considered this matter very carefully from all aspects. It is a fact that a considerable number of native Goans had for generations been migrating to other countries like Africa for earning their livelihood, as during the centuries of colonial rule in Goa, adequate opportunities of employment in the mother land were not available to them. Many of them have not been able

to become Indian citizens for certain technical and practical reasons but their roots are still in this territory. If they are to become evacuees merely by reason of the fact that they are of foreign nationality or domicile and have migrated to other countries, serious hardship is likely to be caused to many families in Goa, and the economy of this territory is also likely to be seriously disrupted. This is a problem peculiar to this territory owing to its historical and political past. The Committee was impressed with the need for saving these native Goans from the operation of this law, as the real object of the Bill is not to create difficulties in their cases. It has, therefore, decided to add a proviso excluding from the purview of item (iii) of this sub-clause, persons of Goan origin who before the relevant date had migrated to any country outside India. To avoid doubts an explanation has been added to clarify the meaning of the expression «Goa, Daman and Diu origin» and the word «migration».

While the need for safeguarding the interests of genuine Goan emigrants was fully realised and provided for by the Committee, it was also felt that persons who by their conduct exhibited tendencies hostile to India should not be given any protection. Power has, therefore, been given to the Government to refuse the benefit of this proviso to such hostile persons.

8. *Clause 4 — sub-clause (2).* The Committee felt that as the Custodian will be required to function as a quasi-judicial authority on many occasions and also to adopt a judicial approach in many cases, it was necessary to provide that he should be a person qualified in law and having such legal experience as may be prescribed. The sub-clause is, therefore, amended accordingly.

9. *Clause 5 — sub-clause (4).* The Committee was of the opinion that it was necessary to prescribe a time limit within which the Custodian shall notify in the Official Gazette the property declared by him to be evacuee property. An amendment has therefore been incorporated prescribing a time limit of 30 days for such notification from the date of declaration.

10. *Clause 8 — sub-clause (2) paragraph (k).* In order to minimise the scope for possible malpractices, the Committee felt it desirable to provide that all sales of evacuee property by the Custodian shall be by public auction unless otherwise directed by Government. A further proviso has, therefore, been added.

11. *Clause 15 — sub-clause (4).* This sub-clause provides that the Custodian shall on demand furnish the evacuee or to his heir, as the case may be, a statement of the account of the expenditure incurred in respect of the property. The Committee felt that a mere statement to the person concerned should be required to cover such further particulars as may be required. The sub-clause is amended accordingly.

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tending evacuee. In this
felt that Portuguese na-

tionals should more effectively be prevented from cheating the public at large in regard to sales of property and that this can be done by specifically prohibiting all sales of property by Portuguese nationals except with the approval of the Custodian. A provision to this effect has been made under clause 32.

13. *Clause 22.* The Committee considered it necessary to make orders under clause 18 also appealable.

14. The Committee felt that it was necessary to add a clause to the Bill giving power to Government to exempt certain persons or class of persons or properties from all or any of the provisions of this law. A new section (45) has, therefore, been added giving power of exemption to Government. Being a matter in which the public is interested such exemptions should in the opinion of the Committee be published in the Gazette and a provision has been made accordingly.

15. The changes made by the Committee in other clauses of the Bill are either clarificatory or minor or of a consequential or drafting nature.

16. The Committee would like to place on record its appreciation for the assistance rendered by the Law Secretary in their deliberations and also for the work done by the Under Secretary, Legislature.

D. B. BANDODKAR

Chairman

ASSEMBLY HALL,

Panjim, August 24, 1964.

[NOTE.—Deletions made by the Select Committee are shown in square brackets and additions are underlined.]

The Goa, Daman and Diu Administration of Evacuee Property Bill, 1964

(Bill no. 6 of 1964)

(As amended by the Select Committee)

A Bill to provide for the administration of evacuee property in the Union territory of Goa, Daman and Diu and for certain matters connected therewith.

Be it enacted by the Legislative Assembly of Goa, Daman and Diu in the Fifteenth Year of the Republic of India as follows:

CHAPTER I

Preliminary

1. *Short title, extent and commencement.* — (1) This Act may be called the Goa, Daman and Diu Administration of Evacuee Property Act, 1964..

(2) It extends to the whole of the Union Territory of Goa, Daman and Diu.

(3) It shall come into force at once.

Definitions.—In this Act unless the context otherwise requires,—

«Administrator» means the Administrator of Union Territory of Goa, Daman and Diu appointed under article 239 of the Constitution of India;

(a) «Custodian» means the Custodian appointed or deemed to be appointed under section 4, and includes any Deputy or Assistant Custodian of the property;

(b) «evacuee» means any person who is not Indian citizen and—

(i) who, on account of liberation of Goa, Daman and Diu, leaves or has, on or after the relevant date, left Goa, Daman and Diu for any place outside India; or

(ii) who has after the relevant date transferred to any place outside India, without the previous approval of the Custodian, his assets or any part of his assets situated in Goa, Daman and Diu; or

(iii) who, during any time before or after the relevant date, has been residing in any place outside India, and who for that reason was or is unable to occupy, supervise or manage in person his property in Goa, Daman and Diu, or whose property has ceased to be occupied, supervised or managed by any person, or is being occupied, supervised or managed by an unauthorised person[;];

Provided that, unless the Government, for good and sufficient reasons directs otherwise, no person of Goa, Daman and Diu origin, shall become an evacuee by virtue of sub-clause (iii), if he had, before the relevant date, migrated to any country outside India and on account of such migration became a national or domiciled of that country.

Explanation: A person shall be deemed to be of Goa, Daman and Diu origin if he or either of his parents or grand parents was born anywhere in India including Goa, Daman and Diu.

«Migration» means the departure out of India of any person for the purpose of any employment or with the intention of engaging in any gainful occupation.

(c) «evacuee property» means any property which an evacuee has any right or interest in whether personally or as a trustee or as a beneficiary or in any other capacity, and includes any property,—

(i) which has been obtained by any person from an evacuee after the relevant date, by any mode of transfer unless such transfer has been confirmed by the Custodian; or

(ii) which belongs to an intending evacuee and in respect of which a declaration is made under section 21.

(d) «Goa, Daman and Diu» means the Union Territory of Goa, Daman and Diu;

(e) «Government» means the Government of Goa, Daman and Diu;

(f) «intending evacuee» means any Portuguese national in Goa, Daman and Diu against whom any intention to settle in any place outside India is established from his conduct or from documentary evidence and who is declared as an intending evacuee under section 18;

(g) «member of the family» of any person means any member of that family who is wholly dependent upon the earning of such person for the provision of the ordinary necessities of life or who shares with such person in the ordinary expenses of the household to which they jointly belong or who owns property or carries on business jointly with such person;

(h) «Official Gazette» means the Goa, Daman and Diu Government Gazette;

(i) «prescribed» means prescribed by rules made under this Act;

(j) «property» means property of any kind and includes any right or interest in such property;

(k) «relevant date» means the sixth day of December, 1961:

Provided that [the Administrator] Government by notification in the Official Gazette fix the 15th day of August, 1964, as the relevant date for any particular class or category of cases;

(l) «unauthorised person» means any person (whether duly empowered in this behalf by the evacuee or otherwise) who, after the relevant date, has been occupying, supervising or managing the property of an evacuee without the approval of the Custodian.

3. **Act to over-ride other laws.**—The provisions of this Act and of the rules and orders made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any such law.

CHAPTER II

Evacuee Property and vesting thereof in the Custodian

4. **Appointment of Custodian, etc.**—(1) The [Administrator] Government may, by notification in the Official Gazette, appoint a Custodian and as many Deputy or Assistant Custodians of evacuee property as may be necessary for the purpose of discharging the duties imposed on the Custodian by or under this Act and may, by general or special order, provide for the distribution of work among them:

Provided that the Custodian shall be a person qualified in law and having such legal experience as may be prescribed.

(2) Notwithstanding anything contained in sub-section (1) any person who was exercising the powers of or functioning as a Custodian of property left behind by Portuguese nationals in Goa, Daman and Diu, by virtue of Proclamation no. XII dated 22nd January, 1962, issued by the Military Governor

thereof, shall be deemed to be a Custodian appointed under this Act until a Custodian is so appointed under this Act.

5. Declaration as evacuee property.— (1) Where the Custodian is of opinion that any property is evacuee property within the meaning of this Act, he may, after causing notice thereof to be given, in such manner as may be prescribed, to the persons interested, and after holding such inquiry into the matter as the circumstances of the case may permit, pass an order declaring any such property to be evacuee property.

(2) Where during the pendency of any proceeding under sub-section (1) for declaring any property to be evacuee property any person interested in the property dies, the proceeding shall, unless the Custodian otherwise directs, be continued and disposed of as if such person were alive.

(3) Where a notice has been issued under sub-section (1) in respect of any property, such property shall, pending the determination of the question whether it is evacuee property or otherwise, be incapable of being transferred or charged in any way except with the leave of the Custodian, and no person shall be capable of taking any benefit from such transfer or charge except with such leave.

(4) The Custodian shall, [from time to time], notify [either] by publication in the Official Gazette [or] and in such other manner as may be prescribed, all properties declared by him to be evacuee properties under sub-section (1) within a period of thirty days from the date of the declaration.

6. Vesting of evacuee property in the Custodian.—

(1) Any property declared to be evacuee property under section 5 shall be deemed to have vested in the Custodian—

(a) in the case of property of an evacuee as defined in sub-clause (i) of clause (c) of section 2, from the date on which he leaves or left any place in Goa, Daman and Diu for any place outside India;

(b) in the case of the property of an evacuee as defined in sub-clause (ii) of clause (c) of section 2, from the date of the notice given under sub-section (1) of section 5 in respect thereof; and

(c) in the case of the property as defined in sub-clause (iii) of clause (c) of section 2, from the relevant date.

(2) Where immediately before the commencement of this Act any property in Goa, Daman and Diu had vested as evacuee property in any person exercising the powers of Custodian under any law or order repealed hereby, the property shall, on the commencement of this Act be deemed to be evacuee property declared as such within the meaning of this Act and shall be deemed to have vested in the Custodian appointed under this Act and shall continue to so vest.

(3) Where after any evacuee property has vested in the Custodian any person, including an officer of Government, is in possession thereof, he shall be deemed to be holding on behalf of the Custodian and shall on demand surrender possession of it to the Custodian or to any other person duly authorised by him in this behalf.

7. Power of Custodian to take possession of evacuee property vested in him.— (1) If any person in possession of any evacuee property refuses or on demand to surrender possession thereof to the Custodian or to any person duly authorised by him in this behalf, the Custodian may use or cause to be used such force as may be necessary for taking possession of such property and may for this purpose after giving reasonable warning (and reasonable facility to any woman who by custom or usage is not appear in public to withdraw), remove or open any lock, bolt or any door or do any other act necessary for the said purpose.

(2) Where it becomes necessary to use force, the Custodian may, with the approval of [the Administrator], Government requisition the aid of the Police and in such cases, every officer of the Police shall be bounded to render such assistance as may be required by the Custodian.

8. Powers and duties of the Custodian generally.

(1) Subject to the provisions of any rules that may be made in this behalf, the Custodian may take such measures as he considers necessary or expedient for the purposes of securing, administering, protecting and managing any evacuee property and generally for the purpose of enabling him satisfactorily to discharge any of the duties imposed on him by or under this Act and may, for any such purpose as aforesaid, do all acts and incur all expenses necessary or incidental thereto.

(2) Without prejudice to the generality of the provisions contained in sub-section (1), the Custodian may, for any of the purposes aforesaid,—

(a) appoint a manager for the property of the evacuee or for carrying on any business or undertaking of the evacuee and authorise the manager to exercise any of the powers of the Custodian under this section;

(b) enter, or authorise any other person to enter any land or premises to inspect any evacuee property;

(c) take all such measures as may be necessary to keep any evacuee property in good repair;

(d) complete any building which has vested in him and which requires to be completed;

(e) require any person, notwithstanding anything to the contrary contained in any other law for the time being in force relating to the disclosure of any information by a public servant or any other person, to furnish such returns, accounts or other information in relation to any property and to produce such documents in his possession as the Custodian considers necessary for the discharge of his duties under this Act;

(f) require any banking company to furnish such information as the Custodian may require with respect to remittances made after the relevant date to any such area outside India as may be specified by the Custodian, either generally, or with reference to any person or class of persons;

(g) take such action as may be necessary for the recovery of any debt due to the evacuee;

(h) institute, defend or continue any legal proceeding in any civil or revenue court on behalf of the evacuee or refer any dispute between the evacuee and any other person to arbitration or compromise any claims, debts or liabilities on behalf of the evacuee;

(i) incur any expenditure, including expenditure on the payment of taxes, duties, cesses and rates to Government or to any local authority or of any amounts due to any employee of the evacuee or of any debt due by the evacuee to any person;

(j) pay to the evacuee, or to any member of his family or to such other person as in the opinion of the Custodian is entitled thereto, any sum of money out of the funds in his possession;

(k) transfer in any manner whatsoever any evacuee property notwithstanding anything to the contrary contained in any law or agreement relating thereto:

Provided that the Custodian shall not sell any immovable property or any business or other undertaking of the evacuee except with the previous approval of [the Administrator;] Government:

Provided further that unless otherwise directed by Government, all sales of property shall be by public auction.

(l) acquire any non-evacuee interest in evacuee property, whether by way of purchase or otherwise;

(m) delegate, by general or special order, all or any of his functions under this Act to such officers or persons as [he thinks fit;] may be prescribed:

Provided that the Custodian shall not delegate any of his functions under clause (f) or clause (g) to any officer or person below the rank of an Assistant Custodian.

9. Power to recover rent or damages in respect of evacuee property vested in the Custodian. — (1) Where any person is in arrears of rent in respect of any evacuee property vested in the Custodian, the Custodian may, by order, require that person to pay the same within such time and in such instalments, if any, as may be specified in the order.

(2) Where any person is deemed to be holding any evacuee property on behalf of the Custodian under sub-section (3) of section 6, the Custodian may, having regard to such principles of assessment of rent as may be prescribed, by order, assess the rent payable in respect of such property and that person shall be liable to pay the rent so assessed.

(3) Where any person is, or has at any time been, in unauthorised possession of any evacuee property vested in the Custodian, the Custodian may, having regard to such principles of assessment of damages as may be prescribed, assess the damages on account of the use and occupation of such property and may, by order, require that person to pay the damages within such time and in such instalments as may be specified in the order.

(4) Where any person being in possession of any evacuee property vested in the Custodian has caused damage to any such property, the Custodian may assess the compensation payable on account of the damage so caused and may, by order, require that person to pay the compensation within such time and in such instalments as may be specified in the order.

(5) No order shall be made under sub-section (2) or sub-section (3) or sub-section (4), until after the issue of a notice in writing to the person concerned calling upon him to show cause within such time as may be specified in the notice why such order should not be made and until his objections, if any, and any evidence he may produce in support of the same have been considered by the Custodian.

10. Custodian's right in respect of leases, allotments or possession of evacuee property. — (1) Notwithstanding anything contained in any other law for the time being in force or in any agreement or contract, the Custodian may cancel any allotment or terminate any lease or amend the terms of any lease or agreement under which any evacuee property is held or occupied by a person (whether such allotment, lease or agreement was granted or entered into before or after the commencement of this Act):

Provided that in the case of any lease granted before the relevant date the Custodian shall not exercise any of the powers conferred upon him under this sub-section unless he is satisfied that the lessee—

(a) has sublet, assigned or otherwise parted with the possession of the whole or any part of the property leased to him; or

(b) has used or is using such property for a purpose other than that for which it was leased to him; or

(c) has failed to pay rent in accordance with the terms of the lease.

(2) Where the title or the right to possession of any evacuee property, as a tenant or otherwise, was on the relevant date the subject matter of any dispute, [such] the right to possession shall be deemed to have vested in the Custodian as from the said date, notwithstanding anything contained in any other law for the time being in force or in any agreement or contract; and the person holding possession shall cease to be entitled to possession.

(3) Where by reason of any action taken under sub-section (1) or sub-section (2), any person has ceased to be entitled to possession of any evacuee property, he shall on demand by the Custodian surrender possession of such property to the Custodian or to any person duly authorised by him in this behalf.

(4) If any person fails to surrender possession of any property on demand under sub-section (3), the Custodian may, notwithstanding anything to the contrary contained in any other law for the time being in force eject such person and take possession of such property in the manner provided in section 7.

11. Special provisions with respect to transfer of tenancy rights of evacuees. — (1) Notwithstanding anything to the contrary contained in this Act or in any other law for the time being in force, where tenancy rights have vested in the Custodian as evacuee property and the Custodian has granted a lease in respect of such property, the Custodian may, in any case where the lessor under whom the property was held immediately before it vested in the Custodian is not an evacuee, declare, by general or special order, that with effect from such date as may be specified in the order he shall stand absolved of all responsibilities with respect to the property or lease granted by him.

(2) On the making of any such declaration as is referred to in sub-section (1) —

(a) the lease granted by the Custodian shall be deemed to have effect as if granted by the lessor under whom the property was held immediately before the Custodian assumed possession or control thereof and shall continue to have such effect until

it is determined by lapse of time or by operation of law;

(b) all sums realised by the Custodian in respect of the said lease before the date of the declaration referred to in sub-section (1) shall, subject to the deduction of fees, if any, payable to the Custodian, become payable to the lessor against whom the lease has now effect.

(3) Nothing contained in this section shall —

(a) be deemed to empower the Custodian to grant, without the consent in writing of the original lessor or his successor in interest —

(i) where the original lease is for a specified period, any lease for a period extending beyond the date on which the original lease would have expired; or

(ii) where the original lease is from year to year or month to month or on any other similar tenure, any lease on a tenure different from that of the original lease.

(b) render the Custodian liable to any person for any sum in excess of the sum payable to the lessor under clause (b) of sub-section (2); or

(c) prejudice any rights of the lessor or the lessee, to which he may be entitled under any other law for the time being in force, consistently with the terms and conditions, if any, of the lease granted by the Custodian.

12. Payments to Custodian to be valid discharge.—

(1) Any amount due to any evacuee in respect of any property which has vested in the Custodian or in respect of any transaction entered into by the evacuee, shall be paid to the Custodian by the person liable to pay the same.

(2) Any payment made otherwise than in accordance with sub-section (1) shall not discharge the person paying it from his obligation to pay the amount due, and shall not affect the right of the Custodian to enforce such obligation against any such person.

13. Recouping of expenditure by Custodian.—Any expenditure incurred by the Custodian in the exercise of any power conferred by or under this Act shall, in relation to any evacuee property in respect of which it has been incurred, be a charge on such property and shall, subject to the provisions of section 42, have priority over all other charges on the property, and such expenditure may be met or recouped by the Custodian out of the income accruing from such property or the sale proceeds thereof.

14. Maintenance of accounts by Custodian. — (1) The Custodian shall maintain a separate account of the property of each evacuee possession whereof has been taken by him, and shall cause to be made therein entries of all receipts and expenditure in respect thereof.

(2) The accounts shall be maintained in such form and in such manner as may be prescribed.

(3) The [Administrator] Government shall cause the accounts maintained under this section to be inspected and audited at such intervals and by such person as may be prescribed.

15. Restoration of evacuee property.— (1) Subject to such rules as may be made in this behalf, any evacuee or any person claiming to be an heir of an evacuee may apply to [the Administrator] Government or to any person authorised by him in this behalf (hereinafter in this section referred to as the authorized person) that any evacuee property which has vested in the Custodian and to which the applicant would have been entitled if this Act were not in force, may be restored to him.

(2) On receipt of an application under sub-section (1) [the Administrator] Government or the authorized person, as the case may be, shall cause public notice thereof to be given in the prescribed manner, and after causing an inquiry into the claim to be held in such manner as may be prescribed, shall —

(a) if satisfied—

(i) that the conditions prescribed by rules made in this behalf have been satisfied;

(ii) that the evacuee property is the property of the applicant; and

(iii) that it is just or proper that the evacuee property should be restored to him;

make an order restoring the property to the applicant, or

(b) if not so satisfied, reject the application:

Provided that where the application is rejected on the ground that the evacuee property is not the property of the applicant, the rejection of the application shall not prejudice the right of the applicant to establish his title to the property in a Civil Court, or

(c) if there is any doubt with respect to the title of the applicant to the property, refer him to a Civil Court for the determination of his title:

Provided that no order for the restoration of any evacuee property shall be made under this sub-section unless provision has been made in the prescribed manner for the recovery of any amount due to the Custodian in respect of the property or the management thereof.

(3) Upon the restoration of the property to the evacuee or to the heir, as the case may be, the Custodian shall stand absolved of all responsibilities in respect of the property, so restored, but such restoration shall not prejudice the rights, if any, in respect of the property which any other person may be entitled to enforce against the person to whom the property has been so restored:

Provided that every lease granted in respect of the property by or on behalf of the Custodian shall have effect against the person to whom restoration is made until such lease is determined by lapse of time or by operation of law.

(4) The Custodian shall, on demand furnish to the evacuee or to the heir, as the case may be, a statement containing an abstract of the account of the income received and expenditure incurred in respect of the property, and such other particulars as may be required by him and as the circumstances may permit.

(5) Where the property had been sold by the Custodian or acquired by Government under any law, the

provisions in the foregoing sub-sections shall apply to the net sale proceeds or, as the case may be, the net compensation hereof.

CHAPTER III

Certain Consequences of Property Vesting in Custodian

16. Exemption of evacuee property from process of Court, etc.— Save as otherwise expressly provided in this Act no evacuee property which has vested or is deemed to have vested in the Custodian under the provisions of this Act shall, so long as it remains so vested, be liable to be proceeded against in any manner whatsoever in execution of any decree or order of any Court or authority, and any attachment or injunction or order for the appointment of a receiver in respect of any such property subsisting on the commencement of this Act, shall cease to have effect on such commencement and shall be deemed to be void.

17. Occupancy or tenancy rights not to be extinguished.— (1) Where the rights of an evacuee in any land or in any house or other building consist or consisted of occupancy or tenancy rights, nothing contained in any law for the time being in force or in any contract or in any instrument having the force of law or in any decree or order of any Court, shall extinguish or be deemed to have extinguished any such rights either on the tenant becoming an evacuee within the meaning of this Act or at any time thereafter so as to prevent such rights from vesting in the Custodian under the provisions of this Act or to prevent the Custodian from exercising all or any of the powers conferred on him by this Act in respect of any such rights, and notwithstanding anything contained in any such law, contract, instrument, decree or order, neither the evacuee nor the Custodian, whether as an occupancy tenant or as a tenant for a certain time, monthly or otherwise, of any land, or house or other building shall be liable to be ejected or be deemed to have become so liable on any ground whatsoever for any default of—

(a) the evacuee committed after he became an evacuee or within a period of one year immediately preceding the date of his becoming an evacuee; or

(b) the Custodian.

CHAPTER IV

Property of intending evacuees

18. Declaration of a person as intending evacuee.— (1) Where the Custodian has reason to believe that a person is an intending evacuee, he may, by notice served in the prescribed manner, call upon such person to show cause why he should not be declared an intending evacuee, and shall, after holding such inquiry into the matter as the circumstances thereof permit, and after taking such evidence as may be produced by or on behalf of the person showing cause, pass an order (stating the reasons therefor) either declaring such person to be an intending evacuee or closing the case.

(2) Any declaration made under sub-section (1) shall be published in the Official Gazette.

(3) The Custodian may, pending determination of the question whether any person is an intending evacuee or otherwise, attach in the prescribed man-

ner any property in Goa, Daman and Diu in which such person has a right or interest, and during the pendency of such attachment, the property shall be incapable of being transferred or charged in any way, except with the leave of the Custodian, and no person shall be capable of taking any benefit from such transfer or charge except with such leave.

19. Consequences of declaration that a person is an intending evacuee.— No person, in respect of whom a declaration has been made under section 18 that he is an intending evacuee, shall transfer in any manner whatsoever any property, in which he has any right or interest, situated in any part of Goa, Daman and Diu except with the previous approval of the Custodian, and any transfer made in contravention of the provisions of this section shall be void and of no effect.

20. Powers of Custodian generally in respect of property of intending evacuees.— For the purpose of preserving any property in which any person in respect of whom a declaration has been made under section 18 that he is an intending evacuee has any right or interest, the Custodian may,—

(a) by order in writing, require any such person to furnish such returns, accounts or other information in relation to any such property and to produce such documents in his possession as the Custodian may require;

(b) inspect the books of account or other documents maintained by or in the possession of such person;

(c) pass such orders or direct such action to be taken in relation to any such property as may be considered by him to be necessary;

(d) by order in writing, prohibit the transfer of any sum of money belonging to any such person or permit such transfer subject to such conditions and restrictions as the Custodian may think fit to impose.

21. Declaration of property of intending evacuee as evacuee property in certain cases.— If the Custodian is satisfied that any person in respect of whom a declaration has been made under section 18 that he is an intending evacuee, has made a transfer of any property in contravention of section 19, or has failed to comply with any order made under clause (c) or clause (d) of section 20, the Custodian may by notification in the Official Gazette declare the property in which such person has any right or interest to be evacuee property, and on the issue of such notification any property specified in the notification shall be deemed to be evacuee property which has vested in the Custodian within the meaning of this Act.

CHAPTER V

Appeals

22. Appeals.— Any person aggrieved by an order made under section 5, section 18, section 31 or section 39 by the Custodian may prefer an appeal in such manner and within such time as may be prescribed to [the Administrator] Government or to such authority or tribunal as may be prescribed and the decision of the [Administrator] Government or the authority or the tribunal, as the case may be, shall be final.

CHAPTER VI

Penalties and Procedure

23. Penalty for failure to surrender possession of evacuee property. — Any person who fails to comply with a notice or demand by or on behalf of the Custodian under the provisions of this Act to surrender possession of any evacuee property shall be punishable with imprisonment for a term which may extend to six months, or with fine, or with both.

24. Penalty for wrongfully paying or receiving rents, etc. — Any person who pays to or receives from any other person any sum of money in respect of any property which he knows or has reason to believe to be evacuee property shall be punishable with imprisonment for a term which may extend to six months, or with fine, or with both:

Provided that nothing contained in this section shall apply to or render punishable any payment made to or received by the Custodian.

25. Penalty for concealing evacuee property. — Any person who wilfully conceals any property which he knows or has reason to believe to be evacuee property shall be punishable with imprisonment for a term which may extend to two years, or with fine, or with both.

26. Penalty for causing damage to evacuee property. — Any person who wilfully destroys or causes damage to any evacuee property or unlawfully converts it to his own use shall be punishable with imprisonment for a term which may extend to three years, or with fine, or with both.

27. Penalty for false declaration in certain cases. Any person who —

- (i) for the purpose of obtaining an allotment or lease of any evacuee property, makes a declaration or statement which is false or which he either knows or has reason to believe to be false, or does not believe to be true, or
- (ii) furnishes any return, account or information which is material to any of the purposes of this Act and which is false or which he either knows or has reason to believe to be false or does not believe to be true,

shall be punishable with imprisonment for a term which may extend to three years, or with fine, or with both.

28. Penalty for offences not expressly provided for. — Any person who contravenes any provision of this Act or of any rule or order made thereunder, or obstructs the lawful exercise of any power conferred by or under this Act or makes default in complying with any requirement of this Act or of any rule or order made thereunder, shall, if no express provision is made by this Act for punishment of such contravention, obstruction or default, be punishable with imprisonment for a term which may extend to six months, or with fine, or with both.

29. Penalty for offences committed by companies. — If the person charged with an offence under this Act is a company or other body corporate, the director, manager, secretary or other officer of the company or other body corporate directly concerned

in the management thereof shall, unless he proves that the offence took place without his knowledge or that he exercised due diligence to prevent such contravention be deemed to be guilty of such contravention.

30. Penalty for abetment. — Any person who abets any of the offences punishable under this Act shall be punishable with the punishment provided for the offence.

CHAPTER VII

Miscellaneous

31. Validity of transfers respecting property subsequently declared to be evacuee property. — (1) No transfer made after the relevant date by or on behalf of any person in any manner whatsoever of any property belonging to him shall be effective so as to confer any rights or remedies in respect of the transfer on the parties thereto or any person claiming under them or either of them if, at any time after the transfer, the transferor becomes an evacuee within the meaning of section 2 or the property of the transferor is declared or notified to be evacuee property within the meaning of this Act, unless the transfer is confirmed by the Custodian in accordance with the provisions of this Act.

(2) An application under sub-section (1) for the confirmation of any transfer may be made by the transferor or the transferee or any person claiming under, or lawfully authorised by, either of them to the Custodian within two months from the date of the transfer or within two months from the date of the declaration or notification referred to in sub-section (1) whichever is later.

(3) Where an application under sub-section (1) has been made to the Custodian for confirmation, he shall hold an inquiry in respect thereof in the prescribed manner and may reject the application if he is of opinion that—

- (a) the transaction has not been entered into in good faith or for valuable consideration; or
- (b) the transaction is prohibited under any law for the time being in force; or
- (c) the transaction ought not to be confirmed for any other reason.

32. Transactions relating to evacuee property void in certain circumstances. — (1) As from the commencement of this Act, no transfer of or transaction in respect of any property belonging to a Portuguese national shall be valid unless it is made with the previous approval of the Custodian.

(2) Subject to the other provisions contained in this Act, every transaction entered into by any person in respect of property declared or deemed to be declared to be evacuee property within the meaning of this Act shall be void unless entered into by or with the previous approval of the Custodian.

33. Submission of information to Custodian in respect of evacuee property. — As soon as may be but not later than sixty days from the commencement of this Act every person who is occupying, supervising or managing any property without the approval of the Custodian which he knows or has reason to believe to be evacuee property, shall submit to the Custodian or to any person authorised by him in this

half, full information relating to such property, including the date from which or the period during which he has been occupying, supervising or managing it, and a detailed account of the rents, profits, income or other benefits received from the said property from the date from which or for the period during which he has been occupying, supervising or managing it.

34. Vesting of property in Custodian not affected by the death of evacuee, etc. — Where in pursuance of the provisions of this Act any property has vested in the Custodian, neither the death of the evacuee at any time thereafter nor the fact that the evacuee who had a right or interest in that property had ceased to be an evacuee at any material time shall affect the vesting or render invalid anything done in consequence thereof.

35. Certain officers to be public servants. — The Custodian and every other person duly appointed to discharge any duties imposed on them by this Act or the Rules or Orders made thereunder shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code (45 of 1860).

36. Powers of the Custodian while holding enquiry. — For the purpose of holding any enquiry under this Act, the Custodian shall have the same powers as are vested in a civil Court under the law for the time being in force, when trying a suit, in respect of the following matters, namely—

a) enforcing the attendance of any person and examining him on oath;

b) compelling the discovery and production of document;

c) any prescribed matter; and the enquiry by the Custodian shall be deemed to be a Judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code and the Custodian shall be deemed to be Court within the meaning of sections 480 and 482 of the Code of Criminal Procedure, 1898.

37. Jurisdiction of Civil Courts barred in certain cases. — Save as otherwise expressly provided in this Act no Civil or Revenue Court shall have jurisdiction—

(a) to entertain or adjudicate upon any question whether any property or any right to or interest in any property is or is not evacuee property; or

(b) to question the legality of any action taken by [the Administrator] Government or the Custodian under this Act; or

(c) in respect of any matter which [the Administrator] Government or the Custodian is empowered by or under this Act to determine.

38. Protection of action taken in good faith. — (1) No suit, prosecution or other legal proceeding shall lie against the Custodian or any person acting under the direction of the Custodian in respect of anything which is in good faith done or intended to be done in pursuance of this Act or of any rules or orders made thereunder.

(2) No suit or other legal proceeding shall lie against the Central Government, [the Administrator]

Government or the Custodian or any other person in respect of any damage caused or likely to be caused by anything in good faith done or intended to be done in pursuance of this Act or of any rules or orders made thereunder.

39. Recovery of certain sums due. — (1) Any sum payable to [the Administrator] Government or to the Custodian in respect of any evacuee property, under any agreement, express or implied, lease or other document or otherwise, howsoever, may be recovered in the same manner as any other sum due to Government.

(2) If any question arises whether a sum is payable to [the Administrator] Government or to the Custodian within the meaning of sub-section (1), the Custodian shall, after making such inquiry as he may deem fit, and giving to the person by whom the sum is alleged to be payable an opportunity of being heard, decide the question; and the decision of the Custodian shall, subject to any appeal under this Act be final and shall not be called in question by any Court or other authority.

(3) For the purposes of this section, a sum shall be deemed to be payable to the Custodian, notwithstanding that its recovery is barred by any law for the time being in force relating to limitation of actions.

40. Record to be public documents. — All records prepared or registers maintained under this Act shall be deemed to be public documents within the meaning of the Indian Evidence Act, 1872, and shall be presumed to be genuine until the contrary is proved.

41. Notice of suits to the Custodian. — If in any suit it appears to the Civil or Revenue Court that a question relating to the property of an evacuee or an intending evacuee is involved, the Court shall not proceed to determine that question until after notice has been given to the Custodian.

(2) A Court may, at any stage of a suit or proceeding, either on its own motion or on application made in this behalf by the Custodian, make an order that the Custodian shall be added as a party to the suit or proceeding, if the Court is satisfied that such addition is necessary or proper for the satisfactory determination of the suit or proceeding.

42. Fees payable to the Custodian. — (1) [The Administrator] Government may fix the fees payable to the Custodian for the management or disposal of any property vested in him.

(2) Such fees shall be payable out of the income or sale proceeds of such property, shall be a first charge on the property and shall be credited and accounted for in such manner as may be prescribed.

43. Power of Central Government to give directions. — The Central Government may give directions to [the Administrator] Government for the purpose of carrying into execution any of the provisions contained in this Act or of any rules or orders made thereunder.

44. Power of [Administrator] Government to take action with regard to evacuee property. — [The Administrator] Government may, for the purpose of regulating or improving the administration of

any property which has vested in the Custodian under the provisions of this Act, pass such order or direct such action to be taken in relation thereto, as in his opinion the circumstances of the case require and as is not inconsistent with any of the provisions contained in this Act.

45. Power to exempt. — (i) Notwithstanding anything contained in this Act, the Government may, if satisfied as to the genuineness of a case for exemption in respect of any person or class of persons, order that the provisions of this Act shall not apply to him or to such class of persons, as the case may be, or to the property concerned, or shall apply with such modifications as may be specified in the order.

(ii) Every such order shall be published in the Official Gazette.

[45.] (46.) **Power to make rules.** — (1) [The Administrator] Government may, by notification in the Official Gazette, make rules to carry out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely: —

(a) the manner in which inquiries under this Act may be held;

(b) the manner in which evacuee properties which have vested in the Custodian may be notified;

(c) the manner in which possession of any evacuee property may be taken by the Custodian;

(d) the manner in which any person claiming any right to, or interest in, any property which has been notified as evacuee property may have his claim registered and disposed of;

(e) the manner in which any attachment may be made by the Custodian;

(f) the circumstances in which, and the conditions subject to which, the Custodian may sell any immovable property vested in him, and the procedure governing the grant of leases and the period for which leases may be granted;

(g) the circumstances in which leases and allotments may be cancelled or terminated or the terms of any lease or agreement varied;

(h) the manner in which rent of any property or damage for unauthorised possession of any property may be assessed, and the principles which may be taken into account in assessing such rent or damages;

(i) the manner in which any moneys due to the Custodian may be recovered;

(j) the form and manner in which books of accounts and other records shall be maintained by the Custodian;

(k) the form in which any notice under this Act may be issued, the manner of its service and publication and the form in which any demand may be made by the Custodian;

(l) the nature of cases and the circumstances in which and the conditions subject to which property may be restored under section 16;

(m) the powers vested in a Civil Court which may be exercised by the Custodian while holding any inquiry under this Act;

(n) the manner in which applications for the previous approval of the Custodian may be made under section 31 and the matters which he shall take into account in granting such approval, and the nature of cases and the circumstances in which the Custodian may confirm or refuse to confirm a transfer under that section;

(o) the form and manner in which and the time within which appeals may be preferred and the fees payable in respect thereof;

(p) the terms and conditions of service of the Custodian and other officers appointed under this Act and for the furnishing of security by them;

(q) the fees payable to the Custodian for the management and disposal of any property vested in him and the manner in which such fees shall be paid, credited or accounted for;

(r) the persons by whom and the time at which books of accounts maintained under this Act may be inspected and audited;

(s) any other matter which has to be or may be prescribed under this Act.

[46.] (47) **Repeal and Savings.** — (1) The Proclamation No. XII dated 22nd January, 1962 issued by the Military Governor of Goa, Daman and Diu is hereby repealed.

(2) The repeal by this Act of the aforesaid Proclamation shall not affect the previous operation of that Proclamation and anything done or any action taken in the exercise of any power conferred by or under that Proclamation shall be deemed to have been done or taken in the exercise of the powers conferred by or under this Act as if this Act were in force on the day on which such thing was done or action was taken.

ASSEMBLY HALL

S. BALAKRISHNAN

Panjim, August 24, 1964

Secretary to the Legislative
Assembly of Goa, Daman
and Diu.

No. LA/662

The following Bill which was introduced in the Legislative Assembly of Goa, Daman & Diu on the 24th August, 1964, is hereby published for general information in pursuance of the provisions of rule 127 of the Rules of Procedure and Conduct of Business of the Legislative Assembly.

The Goa, Daman and Diu Contingency
Fund Bill, 1964

(Bill No. 8 of 1964)

A Bill to provide for the establishment and maintenance of a Contingency Fund for the Union Territory of Goa, Daman and Diu.

Be it enacted by the Legislative Assembly of Goa, Daman and Diu in the Fifteenth Year of the Republic of India as follows: —

1. **Short title, extent and commencement.** — This Act may be called the Goa, Daman and Diu Contingency Fund Act, 1964.

Contingency Fund. — There is a Contingency Fund in the nature of the Contingency Fund of the Union Territory of Goa, Daman and Diu (hereinafter referred to as the Contingency Fund) into which shall be transferred a sum of Rs. 10 lakhs from the Consolidated Fund of the Union Territory of Goa, Daman and Diu a sum of Rs. 10 lakhs.

Withdrawal from the Contingency Fund and withdrawal from the Fund. — The Contingency Fund shall be administered by the Administrator of Goa, Daman and Diu and no advances shall be made out of such fund except for the purposes of meeting unforeseen expenditure pending authorisation of such expenditure by Legislative Assembly or appropriations made by law.

Power to make rules. — For the purpose of carrying out the objects of this Act, the Administrator of Goa, Daman and Diu may make rules regulating all matters connected with or ancillary to the custody of, the payment of monies into and the withdrawal of monies from, the Contingency Fund.

Memorandum Regarding Delegated Legislation

Clause 4 of the Bill empowers the Administrator to make rules to carry out the purposes of the Act. These powers are of a normal character providing only for the details of procedure for facilitating the working of this Act.

Financial Memorandum

Provision is made in the Bill to place a sum of Rs. 10 lakhs in the said Fund by withdrawing a like sum from the Consolidated Fund of the Union Territory of Goa, Daman and Diu.

Statement of objects and reasons

Pursuant to Section 48 of the Government of Union Territories Act, 1963 (No. 20 of 1963), this Bill seeks to provide for the establishment of a Contingency Fund for the Union Territory of Goa, Daman and Diu, for the custody and payment of monies into and the withdrawal of monies from such Fund. It is proposed to place a sum of ten lakhs of rupees in the Fund, which will be administered by the Finance Department on behalf of the Administrator. The advances will be resumed to the Fund as soon as the necessary Supplementary funds have been authorised by the Legislative Assembly through Supplementary Appropriation Acts.

Panjim,

18th August, 1964.

DAYANAND BANDODKAR

Chief Minister

ASSEMBLY HALL

Panjim, August 24, 1964

S. BALAKRISHNAN

Secretary to the Legislative
Assembly of Goa, Daman
and Diu.